

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)
)
 Amendment of Section)
 73.202(b),)
 Table of Allotments)
 FM Broadcast Stations)
 (Cambridge and)
 St. Michaels, Maryland))

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

MM Docket No. 92-291
 RM - 8133

To: Chief, Allocations Branch
 Stop Code 1800D5

REPLY COMMENTS OF PRETTYMAN BROADCASTING COMPANY

Prettyman Broadcasting Company ("Prettyman"), licensee of Radio Station WICO-FM, Salisbury, Maryland, through its attorneys, hereby submits its reply comments to the comments filed on February 3, 1993 by C.W.A. Broadcasting, Inc. ("CWA"), permittee of unbuilt Radio Station WFBR(FM), Channel 232A, Cambridge, Maryland ("WFBR"), in the above-captioned proceeding (hereinafter the "Comments").

Introduction

CWA's Comments supported the proposed reallocation of Channel 232 from Cambridge to St. Michaels contending that the proposed reallocation: (a) will result in a "preferential arrangement of allotments" because it will provide St. Michaels, Maryland with its first local FM service; (b) will not adversely affect Cambridge since it will continue to be a well-served area; and (c) will result in a net service gain of 53,487 persons. As demonstrated herein, the proposed allocation should be denied because:

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- (1) CWA's proposal is merely an untimely counterproposal to the prior Cambridge allocation; and,
- (2) the public interest is best served by preserving the current allotments.

CWA's Proposal Is Merely An
Untimely Counterproposal to the
Prior Channel 232A Allocation To Cambridge

When examined against the complete factual background of the 1985 allocation of Channel 232A to Cambridge, CWA's proposal can be properly characterized as a grossly untimely counterproposal to the channel's previous reallocation from Salisbury to Cambridge, Maryland.^{1/} The FCC determined, through a 1985 allocation rulemaking, that the Cambridge community deserved a second local FM service.^{2/} When the rulemaking was initiated, Cambridge already was receiving service from Radio Stations WCEM(AM) and WCEM-FM. Moreover, St. Michaels, which CWA lauds as the oldest town in Talbot County, was in existence and thus could have been offered as an alternate new community of license for Channel 232A. However, no such counterproposal was made during the

^{1/} In its initial comments in this proceeding, Prettyman provides a complete full history of the prior allocation of Channel 232A to Cambridge and CWA's efforts during its tenure as the permittee of a new FM station on Channel 232A at Cambridge and hereby incorporates by reference the history provided. See Prettyman Comments at 2-6.

^{2/} See Report and Order, MM Docket No. 84-1043, released August 20, 1985.

rulemaking; thus, the FCC granted the proposed Cambridge allocation. Several parties, including CWA, then vied for the opportunity to provide the public-interest determined FM service on Channel 232A at Cambridge.

Here in 1993, almost eight years later, CWA proposes to reallocate Channel 232A once again -- this time the proposed destination is St. Michaels. Significantly, both CWA's petition for rulemaking filed in November, 1992 and its Comments are devoid of any showing that Cambridge is now any less deserving of its promised second local FM service than it was in 1985. Moreover, CWA has failed to demonstrate that its proposal could not have been offered during the 1984-1985 Channel 232A rulemaking or why it was not more appropriate for such proposal to be made at that time.^{3/} In fact, given the area growth over this nearly eight-year period, it is probable that Cambridge, a community almost

^{3/} In its initial comments, Prettyman submitted that the grant of CWA's proposal would threaten the integrity of the FCC's allocation processes by providing an opportunity for permittees to engage in "community shopping." See Prettyman Comments at 7-8. If CWA is not required to explain its motives for proposing the reallocation of Channel 232A to St. Michaels here in 1993 rather than in 1985 during the earlier rulemaking, then Prettyman's forewarned community shopping phenomenon is implicated. The implication is further enhanced by the fact that CWA's proposal is premised on facts existing at the time of the earlier proceeding and a reversal of the rationale underlying the decision reached in the earlier proceeding. At the very least, therefore, CWA should be called upon to eliminate such concerns.

ten times larger than St. Michaels, now has a greater need for a second FM local service.

In light of the FCC and private resources which have been expended in reallocating Channel 232A to Cambridge and selecting a Cambridge permittee and Cambridge's demonstrated need for a second local service, it is imperative that CWA be required to make a showing justifying the removal of Channel 232A from Cambridge which is not grounded in facts already existing when the channel was allocated to Cambridge.

The Public Interest Is Best Served
By Maintaining The Current Allotments

A. CWA Has Failed To Demonstrate Adequately
Its Ability to Effectuate Its Proposal.

During its almost three-year tenure as the WFBR(FM) permittee, CWA failed to make substantial tangible progress towards the construction of a Cambridge FM facility. Despite its failure to make significant cognizable efforts towards providing expeditious service to Cambridge on Channel 232A, CWA now comes before the FCC again promising to deliver expeditious service to another seemingly deserving community, St. Michaels. Given its previous track record as the WFBR(FM) Cambridge permittee, there are serious doubts raised about CWA's ability to fulfill its most recent promise. Moreover, CWA has failed to provide

any evidence that it will be any more successful at providing service to St. Michaels than it was for Cambridge.

In fact, certain parallels arise between CWA's efforts in Cambridge and its proposed efforts in St. Michaels regarding an available transmitter site and indicate that serious questions remain about CWA's ability to effectuate its proposal. As a general matter, CWA submits that it has been stymied in its efforts in Cambridge due to zoning problems purportedly beyond its control.^{4/} From a careful review of the record of CWA's zoning dilemma, however, it appears that CWA's lack of due diligence and misjudgment could have been a contributing factor to its current zoning problems. When CWA filed its application for the WFBR(FM) permit, it had acquired zoning approval for its authorized transmitter site. Subsequent to the FCC's initial award of the WFBR permit, the zoning approval was allowed to lapse. CWA then reapplied for zoning approval for the WFBR(FM) tower but also requested approval to collocate the station's studio at the proposed site. The addition of the studio to CWA's proposal was met with strong opposition from local residents. CWA's "new" proposal was eventually denied by the zoning officials and it was suggested that CWA acquire space on an already existing tower.

^{4/} See Comments at 3.

To date, for reasons not disclosed in either its petition for rulemaking or Comments, CWA has not obtained permission to use another tower to provide the promised second local FM service to Cambridge. Therefore, it is not evident whether the delay in providing the promised service to Cambridge is the direct result of CWA's actions, or lack thereof, or a problem endemic to any party attempting to provide such service. Absent such a showing, there is an insufficient basis for removing Channel 232A from Cambridge without any evidence of a diligent effort to provide such service and/or a general inability to do so.

Now, CWA submits that it will be able to provide expeditious service to St. Michaels by utilizing the tower of Television Station WBOC-TV, Salisbury, Maryland, identified as the Wade Point site. The exhibits submitted by CWA pertaining to the availability of tower space at the Wade Point site and WBOC-TV's agreement to provide CWA with such space do not demonstrate that CWA has a definitive agreement regarding such use.^{5/} To the contrary, as indicated by its exhibits, CWA has failed to fulfill WBOC-TV's stated condition precedent for its agreement to allow CWA to use its tower -- namely, the completion of a tower structural analysis. Although WBOC-TV has indicated a general willingness to provide tower space to CWA, the

^{5/} See Comments at Exhibit B.

results of a tower structural analysis may determine that such use is not feasible. Consequently, CWA would once again be in search of an authorized site for WFBR(FM). Notably, CWA has not indicated any alternative tower sites in the event that it is unable to use the WBOC-TV tower. As a result, there is a possibility that CWA would be faced with the same zoning problems and delay as it met in Cambridge, especially given the lack of any existing towers in St. Michaels. Therefore, CWA has failed to demonstrate its ability to provide service to St. Michaels any more expeditiously than it has done for the Cambridge community.

B. CWA Should Be Required To Fulfill
Its Service Obligation To Cambridge.

By filing an application during the 1985 filing window for Channel 232A at Cambridge, CWA voluntarily took on the responsibility and obligation to provide expeditious service to Cambridge. As noted above, during its almost three-year tenure as the permittee for WFBR(FM), CWA has failed to construct a Cambridge FM facility or even to obtain a permanent Cambridge transmitter site. Significantly, during this entire period Cambridge has been waiting for its promised second local FM service. If CWA's proposal is granted, then all of the waiting for and expressed interest in providing such a service would have been for naught. CWA should not be allowed to shirk his service obligation to the Cambridge community merely because another community now

seems more appealing and attractive to it.^{6/} Instead, CWA should be required to provide expeditious service to Cambridge or to transfer the WFBR(FM) permit to another party is willing and able to do so.

The Cambridge community is not the only party that has been adversely affected by CWA's delay in providing the promised service.^{7/} Prettyman's future operational goals and plans for Station WICO-FM, currently operating on Channel 232A and ordered to change to Channel 248A, has also been in a state of limbo during this time because of CWA's extended delay in constructing the Cambridge FM facility and the resulting uncertainty of when, or if, such construction would be completed. If the CWA proposal is granted, however, Prettyman's limbo will be extended for another

6/ CWA submits that its proposal will result in a net service gain of 53,487 persons. See Comments at Exhibit 2. Given the history of Channel 232A at Cambridge, Prettyman submits that any proposed service gain is an inadequate basis for stripping Cambridge of a second local FM service which already has been demonstrated as being in the public interest. As a result, the gain and loss estimates provided by CWA do not accurately reflect the service costs to Cambridge presented by the proposed reallocation.

7/ Prettyman reiterates and incorporates by reference its demonstration of the adverse impact of CWA's previous delays in initiating service on Channel 232A at Cambridge, the harm created by grant of the CWA proposal and the solutions offered to address Prettyman's concerns, including but not limited to CWA's recertification of its ability to reimburse Prettyman for channel change expenses and Prettyman being afforded an opportunity to initiate an expedited rulemaking to return to its original FM allocation. See Prettyman Comments at 11-20.

indefinite term. At this point, equity should dictate that CWA not be allowed to subject Prettyman to any further years of delay.

Conclusion

Given the factual background of the allocation of Channel 232A to Cambridge and CWA's efforts during its tenure as the WFBR(FM) Cambridge permittee, CWA's Comments failed to demonstrate that the proposed reallocation is in the public interest. In fact, as demonstrated herein, the public interest is best served by requiring CWA to provide expeditious service to Cambridge on Channel 232A. Prettyman, therefore, respectfully submits that the proposed reallocation and amendment to the FM Table of Allotments should be rejected.

Respectfully submitted,

PRETTYMAN BROADCASTING COMPANY

By: Nancy L. Wolf
Nancy L. Wolf
D'wana R. Speight

Its Attorneys

DOW, LOHNES & ALBERTSON
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

February 19, 1993

CERTIFICATE OF SERVICE

I, Lisa Saunders, hereby certify that copies of the foregoing "REPLY COMMENTS OF PRETTYMAN BROADCASTING COMPANY" were sent February 19, 1993, via First Class, United States mail, postage prepaid, to the following:

* Mr. Michael Ruger
Chief, FM Allocations Branch
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Mr. Charles W. Adams, Jr.
C.W.A Broadcasting, Inc.
35 Solomons Island Road
Annapolis, Maryland 21401



Lisa Saunders

* Denotes Hand Delivery